

1  
2  
3 FOR PUBLICATION

4  
5 UNITED STATES BANKRUPTCY COURT  
6 EASTERN DISTRICT OF CALIFORNIA  
7

8  
9 In re ) Case No. 13-90888-E-7  
10 MICHAEL W. BADIOU and )  
11 ANN M. BADIOU, )  
12 Debtors. )

13 SENTRY SELECT INSURANCE ) Adv. Proc. No. 13-9027  
14 COMPANY and AMERICAN )  
15 CHEVROLET-GEO, INC., )

16 Plaintiffs, ) DATE: December 8, 2014 Trial  
17 v. ) TIME: 9:30 a.m.  
18 ) DEPT: E

19 MICHAEL W. BADIOU, )  
20 Defendant. )  
21 )

22 SUPPLEMENTAL FINDINGS OF FACT  
23 AND  
24 CONCLUSIONS OF LAW

25 On December 18, 2014, this court stated oral findings of fact  
26 and conclusions of law on the record in this Adversary Proceeding.  
27 Fed. R. Civ. P. 52(a)(1); Fed. R. Bank. P. 7052. At that hearing,  
28 the parties presented arguments on whether the punitive damages  
claim could be assigned or be subject to subrogation. The parties  
thereafter filed post-trial briefs on the issue. Upon  
consideration of the additional arguments and post-trial briefs,

1 the court determined that supplemental findings of fact and  
2 conclusions of law are necessary to provide a complete record on  
3 the issue.<sup>1</sup>

4 **SUPPLEMENTAL FINDINGS AND CONCLUSIONS**

5 The court is presented with the issue of whether Sentry Select  
6 Insurance Company ("Sentry Select") obtained by subrogation the  
7 rights of American Chevrolet-Geo, Inc. ("Insured") to prosecute a  
8 claim for punitive damages arising from the conduct of Michael  
9 Badiou ("Defendant-Debtor"). Sentry Select is prosecuting this  
10 Adversary Proceeding asserting the claim it obtained by subrogation  
11 from Insured for \$349,899.75 in damages arising from the misconduct  
12 of the Defendant-Debtor.

13 As shown in the competing post-trial briefs, analysis of  
14 whether a claim for punitive damages may be transferred by  
15 assignment or subrogation can quickly become mired in purported  
16 conclusive statements by the California Court of Appeal. In  
17 considering this issue, this court begins with the basics.

18 For questions of state law, a federal court is bound by the  
19 decisions of the highest court of that state. In the absence of  
20 such a decision, a federal court must predict how the highest state  
21 court would decide the issue using intermediate appellate court  
22 decisions, decisions from other jurisdictions, statutes, and  
23 treatises. *Vestar Dev. II, LLC v. Gen. Dynamics Corp.*, 249 F. 3d  
24 958, 960 (9th Cir. 2001).

25 Under settled canons of statutory construction, the California  
26

---

27 <sup>1</sup> The court set a hearing for further argument on this  
28 issue. The parties have stipulated to waive the additional oral  
argument. Stipulation, Dckt. 147.

1 Supreme Court<sup>2</sup> ascertains the meaning of a statute by applying the  
2 usual and ordinary meaning of the words. *KimmeI v. Goland*, 51 Cal.  
3 3d 202, 208 (Cal. 1990). The statute's plain meaning controls the  
4 court's interpretation unless the words are ambiguous. *Green v.*  
5 *State of California*, 42 Cal. 4th 254, 260 (Cal. 2007). When more  
6 than one statutory construction is arguably possible, the Supreme  
7 Court selects the construction that comports most closely with the  
8 apparent legislative intent, seeking to promote, rather than  
9 defeat, the statute's purpose. *Imperial Merchant Services, Inc. v.*  
10 *Hunt*, 47 Cal. 4th 381, 388 (Cal. 2009).

#### 11 **ASSIGNABILITY OF CLAIMS**

12 Before rushing headlong into the various state law insurance  
13 cases cited in the competing briefs, this court first considers  
14 California law relating to the assignability and the enforcement of  
15 claims by an assignee or subrogee. For a claim to be subject to  
16 subrogation, it must be assignable. *Fifield Manor v. Finston*, 54  
17 Cal. 632, 641 (Cal. 1960). California Civil Code § 954 provides  
18 that a "thing in action" arising out of the violation of a property  
19 right or out of an obligation may be transferred by the owner.<sup>3</sup> A  
20 "thing in action" is further defined to be "[a] right to recover  
21 money or other personal property by a judicial proceeding." Cal.  
22 Civ. 953.

23 The Supreme Court has qualified the "every thing in action is

---

24  
25 <sup>2</sup> Unless otherwise stated, references to "Supreme Court"  
are to the California Supreme Court.

26 <sup>3</sup> This Civil Code Section was enacted in 1872 and amended  
27 in 1990, Chapter 79 § 2 (AB 759). The 1990 amendment did not  
28 alter that portion of the statute applicable to the question  
before the court.

1 assignable" rule with the limited exception that certain "personal  
2 rights" are not assignable.

3 It is a rule universally recognized that one who is  
4 injured personally may not assign a claim growing out of  
5 such tort but there is some authority to the effect that  
almost every other kind of property is assignable.

6 *Perkins v. Sunset Tel. & Tel. Co.*, 155 Cal. 712, 720 (Cal. 1909).

7 Going back further in time, the Supreme Court enunciated this  
8 exception in *Rued v. Cooper*, 109 Cal. 682, 694 (Cal. 1893), quoting  
9 the decision of the New York Court of Appeals in *Meech v. Stoner*,  
10 19 N.Y. 26, 30 (NY 1859), stating:

11 'Assignability of things in action is now the rule;  
12 nonassignability, the exception; and this exception is  
13 confined to wrongs done to the person, the reputation, or  
the feelings of the injured party, and to contracts of a  
purely personal nature, like promises of marriage.'

14 The court in this case [Meech] sustained the views  
15 above quoted by further argument and the citation of the  
16 number of cases, both English and American, and in these  
views we concur.

17 In the 20th Century, the California Court of Appeal addressed  
18 the personal wrongs exception to the general rule in the context of  
19 a legal malpractice claim. In *Fireman's Fund Ins., Co. v.*  
20 *McDonald, Hecht & Solberg*, 30 Cal.App.4th 1373, 1381-1382 (Cal.App.  
21 1994), the Court of Appeal stated:

22 It is now well settled that under California law a former  
23 client may not voluntarily assign his claims for legal  
24 malpractice against his former attorneys. In *Goodley v.*  
*Wank & Wank, Inc.* (1976) 62 Cal. App. 3d 389, and more  
25 recently in *Jackson v. Rogers & Wells, supra*, 210 Cal.  
26 App. 3d p. 336, the courts determined that although  
27 choses in action for property or pecuniary losses are  
generally assignable, a claim for legal malpractice is  
28 more akin to those types of claims which are not  
assignable, i.e., claims for personal injury, wrongs of  
a purely personal nature (such as injuries to the  
reputation or feelings of the injured party) or breaches  
of contracts of a purely personal nature (such as

1 promises of marriage). [Citations.] *Goodley and Jackson*  
2 concluded that the attorney-client relationship (although  
3 containing contractual elements) is unique and involves  
4 a highly personal and confidential relationship, making  
5 the relationship "... more analogous to a contract of a  
6 personal nature than to an ordinary commercial contract'  
7 [citation], and rendering claims for negligent breach  
8 thereof nonassignable." (*Kracht v. Perrin, Gartland &*  
*Doyle, supra*, 219 Cal. App. 3d at p. 1023, italics in  
original.) FN.7.

-----  
FN.7. In *Jackson v. Rogers & Wells, supra*, 210 Cal. App.  
3d 336, we noted "the hybrid contract-tort nature" of  
claims for legal malpractice. (*Id.* at p. 342.)  
-----

9 The malpractice claim not being assignable, a third-party could not  
10 acquire it through subrogation. *Id.* at 1384.

11 In 2006, the Supreme Court addressed the assignability of tort  
12 claims in *Essex Ins. Co. V. Five Star Dye House, Inc.*, 38 Cal.4th  
13 1252 (Cal. 2006). In *Essex*, the specific question presented to the  
14 Supreme Court was whether an insured's tort claim for attorneys'  
15 fees<sup>4</sup> relating to a claim for the tortious breach of the covenant  
16 of good faith and fair dealing could be assigned. The Supreme  
17 Court reaffirmed the general rule of assignability of claims,  
18 stating:

19 California, as set forth both in case law and by statute,  
20 maintains a policy encouraging the free transferability  
21 of all types of property. (See Civ. Code, §§ 954, 1044,  
22 1458; *Farmland Irrigation Co. v. Dopplmaier* (1957)  
23 48 Cal.2d 208, 222 [308 P.2d 732]; *Robert H. Jacobs, Inc.*  
*v. Westoaks Realtors, Inc.* (1984) 159 Cal. App. 3d 637,  
24 645.) "[I]t is a fundamental principle of law that one  
25 of the chief incidents of ownership in property is the  
26 right to transfer it." (*Bias v. Ohio Farmers Indemnity*  
*Co.* (1938) 28 Cal. App. 2d 14, 16.)

This "chief incident of ownership" applies equally to  
tangible and intangible forms of property, including

---

27 <sup>4</sup> In *Brandt v. Superior Court*, 37 Cal.3d 813 (Cal. 1985),  
28 the Supreme Court determined that attorneys' fees may be  
recovered as tort claim damages relating to a breach of the  
covenant of good faith and fair dealing.

1 causes of action. Originally codified in 1872,  
2 section 954 states, "A thing in action, arising out of  
3 the violation of a right of property, or out of an  
4 obligation, may be transferred by the owner." An  
assignment is a commonly used method of transferring a  
cause of action.

5 *Id.* at 1259.

6 In *Essex*, notwithstanding the general rule of assignability,  
7 it was asserted that the tort claim for the attorneys' fees was  
8 within the "personal in nature claim" exception. The Supreme Court  
9 cited its earlier decision in *Murphy v. Allstate Ins. Co.*,  
10 17 Cal.3d 937 (Cal. 1976), in which it discussed that an insured  
11 could hold a bundle of claims, some of which were assignable and  
12 some (such as a claim for emotional distress damages) which were  
13 not assignable or subject to subrogation. With such a mix of  
14 claims, assigning only a portion of the claims puts the insured at  
15 risk of losing the ability to prosecute the unassignable claims  
16 based on the rule against the splitting of a cause of action. *Id.*  
17 at 943.

18 In *Essex*, the Supreme Court rejected the contention that the  
19 *Brandt* tort right to attorneys' fees was *per se* nonassignable.  
20 *Essex*, 38 Cal.4th at 1264. Disallowing the recovery of the  
21 attorneys' fees which flowed from the assignable claim would result  
22 in a "windfall" for the wrongdoer. Further, prohibiting the  
23 transfer of all of the rights relating to the assignable claim  
24 would discourage the assignment of such claims, which would be  
25 contrary to the public policy favoring transferability of causes of  
26 action. *Id.*

27 The Supreme Court in *Essex* also rejected the contention that  
28 allowing the recovery by the assignee of the attorneys' fees

1 relating to the tort claim would be against public policy because  
2 it would not serve to make the injured insured whole. The Supreme  
3 Court concluded:

4 Disallowing recovery of *Brandt* fees in cases such as this  
5 would result in a windfall for the insurer, whose  
6 liability for tortious conduct would be significantly  
7 reduced because of the fortuitous circumstance of the  
8 assignment of the bad faith claim. As we have recognized,  
9 recoverable *Brandt* fees may exceed the contract benefits  
10 wrongfully withheld. (*Cassim v. Allstate Ins. Co., supra*,  
11 33 Cal.4th at p. 809.) Disallowing recovery of *Brandt*  
12 fees incurred by assignees would also tend to discourage  
13 assignment of bad faith claims against insurance  
14 companies, contrary to the public policy favoring  
15 transferability of causes of action.

16 *Id.*

#### 17 **PUNITIVE DAMAGES**

18 California Civil Code § 3249, enacted in 1872, is the  
19 codification of the basis for punitive damages in California. In  
20 relevant part, California Civil Code § 3249 states:

21 (a) In an action for the breach of an obligation not  
22 arising from contract, where it is proven by clear and  
23 convincing evidence that the defendant has been guilty of  
24 oppression, fraud, or malice, the plaintiff, in addition  
25 to the actual damages, may recover damages for the sake  
26 of example and by way of punishing the defendant.

27 Cal. Civ. 3249(a).

28 The Supreme Court addressed punitive damages and who may  
properly assert them in *People v. Superior Court*, 9 Cal.3d 283, 285  
(Cal. 1973). The Supreme Court was presented with a claim for  
punitive damages by the California Attorney General on behalf of  
all Californians. No claim for compensatory damages for any  
persons harmed by the alleged unfair business practices was  
asserted by the Attorney General. As discussed below, the Supreme  
Court concluded that a general demand for punitive damages,

1 divorced from actual harm to a person, could not be asserted by the  
2 Attorney General.

3 It is well-established that punitive damages are not damages  
4 to make an injured person whole. "[P]unitive damages serve but one  
5 purpose - to punish and through punishment, to deter." *Dyna-Med,*  
6 *Inc. v. Fair Employment & Housing Com.*, 43 Cal.3d 1379, 1387 (Cal.  
7 1987).<sup>5</sup>

8 Punitive damages by definition are not intended to  
9 compensate the injured party, but rather to punish the  
10 tortfeasor whose wrongful action was intentional or  
11 malicious, and to deter him and others from similar  
extreme conduct. See Restatement (Second) of Torts § 908  
(1979); W. Prosser, *Law of Torts* 9-10 (4th ed. 1971).

12 *Newport v. Fact Concerts*, 453 U.S. 247, 266-267 (1981).

13 The non-compensatory nature of punitive damages has been described  
14 by the Supreme Court as, "[e]ssentially a windfall for plaintiffs  
15 that the law permits for public policy reasons." *Cassim v.*  
16 *Allstate Ins. Co.*, 33 Cal.4th 780, 812 (Cal. 2004).

17 The Supreme Court has also addressed punitive damages being a  
18 remedy, rather than a separate claim in its own right, dependent on  
19 the plaintiff having a separate claim for actual damages. The  
20 remedial nature of punitive damages is stated to be:

21 In California, as at common law, actual damages are an  
22 absolute predicate for an award of exemplary or punitive  
23 damages. (See Civ. Code, § 3294; *Mother Cobb's Chicken*  
*T., Inc. v. Fox* (1937) 10 Cal.2d 203, 205; *Hilliard v.*  
24 *A.H. Robins Co.* (1983) 148 Cal.App.3d 374, 391; compare  
Rest.2d Torts, § 908, com. c.) Even nominal damages,  
which can be used to support an award of punitive

---

25  
26 <sup>5</sup> See also *PPG Industries, Inc. v. Transamerica Ins. Co.*,  
20 Cal.4th 310, 317 (Cal. 1999); *Walnut Creek Manor v. Fair*  
27 *Employment & Housing Com.*, 54 Cal.3d 245, 271 (Cal. 1991); *Neal*  
28 *v. Farmers Ins. Exchange*, 21 Cal. 3d 910, 917 Fn. 13 (Cal. 1978).  
("The purpose of punitive damages is to punish wrongdoers and  
thereby deter the commission of wrongful acts.")

1 damages, require actual injury. (*Fields v. Napa Milling*  
2 Co. (1958) 164 Cal.App.2d 442, 447-448.)

3 *Kizer v. County of San Mateo*, 53 Cal. 139, 148 (Cal. 1991). There  
4 is no independent cause of action for punitive damages, but such  
5 rights are incidents of another claim for damages. *Hilliard v.*  
6 *A.H. Robins, Co.*, 148 Cal.App. 3d 374, 391 (Cal. App. 1983).

7 Defendant-Debtor's argument is built on the California Court  
8 of Appeal decision in *French v. Orange County Inv. Corp.*, 125  
9 Cal.App 587 (Cal.App. 1932). The plaintiff in *French* was an  
10 assignee asserting a claim alleging "fraudulent conversion of a  
11 deed." That plaintiff assignee contended that the defendants had  
12 misrepresented to the assignor the value of the property to be sold  
13 and that the assignor's escrow had improperly released the deed  
14 contrary to the instructions of the assignor. No rights to the  
15 property which was the subject of the deed were asserted or  
16 purported to have been assigned to that plaintiff.

17 The District Court of Appeal affirmed the trial court ruling  
18 that the assignee in *French* could not prosecute a claim for  
19 punitive damages, holding:

20 The plaintiff's objection that he was not awarded  
21 exemplary damages in addition to compensatory damages is  
22 not well taken, because plaintiff prosecutes this action  
23 solely and only as assignee of the cause of action of the  
24 injured persons who owned the property at the time of the  
25 alleged unlawful conversion of their deed. In 8 Ruling  
26 Case Law page 595, it is said: "Exemplary damages are  
27 allowed only to the immediate person receiving the  
28 injury, either in a suit prosecuted by himself or by  
someone for his use." This appears to be harmonious in  
principle with the rule that "a bare right to file a bill  
in equity for fraud committed upon the assignor will be  
denied because the transfer of such right is against  
public policy." (*Swallow v. Tungsten Products Co.*, 205  
Cal. 207, 217.)

1 *Id.*, pg. 591. In *French*, the forgoing statement that punitive  
2 damages are not assignable is the only basis for that portion of  
3 the ruling.<sup>6</sup>

4 Consideration of the statement in *French* begins with the  
5 ruling in *Swallow v. Tungsten Products Co.*, 205 Cal. 207, 217 (Cal.  
6 1928). In *Swallow*, the Supreme Court held that the assignee of  
7 property rights (mining claims) could assert a claim for fraud  
8 against a third-party asserting a competing interest in the mining  
9 rights. The competing interest asserted by the third-party were  
10 obtained through an execution sale conducted for a prior judgment  
11 entered against the assignor. The assignee contended that fraud  
12 had been committed in connection with the prior judgment having  
13 been entered against the assignor.

14 The assignee in *Swallow* alleged that fraud on the court  
15 (misrepresentation of service) rendered the prior judgment void and  
16 that no interest could have been obtained through the execution  
17 sale to the third-party purchaser. The Supreme Court concluded  
18 that because the assignee of the mining claim was asserting the  
19 fraud claim to directly attack the prior judgment entered against  
20 the assignor in defending the assigned mining claim, the fraud  
21 claim could be assigned as well. *Swallow* was not a case in which  
22 a naked fraud claim, unassociated to other assignable rights, was  
23 being asserted by an assignee. *Id.* at 217-218 (ruling of District

---

24  
25 <sup>6</sup> Defendant-Debtor also directs the court to *Dugar v. Happy*  
26 *Tiger Records, Inc.*, 41 Cal.App. 3d 811 (Cal.App. 1974), in  
27 support of the contention that California law provides a *per se*  
28 bar to any assignment of punitive damages. The decision in *Dugar*  
is based on citing to the holding of the Supreme Court in *People*  
*v. Superior Court, infra*, and the District Court of Appeal in  
*French*, and does not provide additional analysis on this issue.

1 Court of Appeal incorporated into Supreme Court decision).

2 This court has been directed by Sentry Select to the recent  
3 decision from the U.S. District Court in *Public Service Mutual*  
4 *Insurance Co. v. The Liberty Surplus Insurance Corporation*, 2:14-  
5 cv-00226, 2014 U.S. Dist. LEXIS 139773 (E.D. Cal. 2014). In *Public*  
6 *Service* the battle was between two insurance companies. The  
7 secondary insurance company paid the insured for a loss and filed  
8 suit against the primary insurance company. The secondary  
9 insurance company asserted various claims against the primary  
10 insurance company, asserting claims which included indemnification,  
11 breach of the covenant of good faith and fair dealing, and punitive  
12 damages.

13 The primary insurance company filed a motion to strike various  
14 causes of action, including the punitive damages claim. The  
15 District Court concluded that under California law punitive damages  
16 are treated as a remedy which is attached to another independent  
17 claim as opposed to a separate claim in and of itself. Finding  
18 that the secondary insurance company had obtained the independent  
19 claim for damages, the District Court determined that the secondary  
20 insurance company had acquired and could assert the punitive  
21 damages claim, as a remedy for the assignable claim, against the  
22 primary insurance company. *Id.* at \*27-\*28.

### 23 **DISCUSSION**

24 This court is convinced that the Supreme Court has not, and  
25 would not, state California law to be that there is a *per se* bar on  
26 the assignment of a punitive damages claim. The Court of Appeal in  
27 *French*, which relies upon the decision in *Swallow*, quotes only that  
28 portion of *Swallow* which states, "a bare right to file a bill in

1 equity for fraud committed upon the assignor will be denied because  
2 the transfer of such right is against public policy" *French v.*  
3 *Orange County Inv.*, 125 Cal.App. at 591. What the decision in  
4 *French* does not address is the further statement of the Supreme  
5 Court that:

6 "In *Emmons v. Barton*, 109 Cal. 662, the court referred to  
7 the rule stated in *Whitney v. Kelley, supra*, that a mere  
8 right to complain of fraud is not assignable. But the  
9 court said that this rule 'does not apply to a case where  
10 the right to sue for a fraud is merely incidental to a  
11 subsisting substantial property which has been assigned,  
12 and which is itself intrinsically susceptible of legal  
13 enforcement.' The same proposition is repeated in *Kemp*  
14 *v. Enemark*, 194 Cal. 748, 756."

11 *Swallow v. Tungston Products Co.*, 205 Cal. at 219 (incorporating  
12 the ruling of the District Court of Appeal). Going directly to the  
13 prior ruling, the Supreme Court states in *Emmons v. Barton*,  
14 109 Cal. 662, 667 (Cal. 1895):

15 But the rule in question [nonassignability of bare fraud  
16 claim], as established by the authorities, applies only  
17 to a case where the assignment does not carry anything  
18 which has itself a legal existence and value, independent  
19 of the right to sue for a fraud. It does not apply to a  
20 case where the right to sue for a fraud is merely  
21 incidental to a subsisting substantial property which has  
22 been assigned, and which is itself intrinsically  
23 susceptible of legal enforcement. An examination of the  
24 authorities -- many of which are quoted and referred to  
25 in *Whitney v. Kelley, supra* -- discloses that the rule in  
26 question does not govern in cases where the assignors  
27 "have some substantial possession and some capability of  
28 personal judgment, and not a mere naked right to upset  
a legal instrument or to maintain a suit."

23 California Civil Code § 954 starts with the general rule that  
24 claims (things in action) are assignable. *Rued v. Cooper*, 109 Cal.  
25 at 692. It is only wrongs to the person, reputation, or feelings  
26 of the injured party, or to contracts of a purely personal nature,  
27 like promises of marriage. *Id.* at 693.

28 The remedy of punitive damages asserted by Sentry Select is

1 not one which is related to a non-assignable claim for such  
2 personal wrongs or contracts. This court has determined that  
3 Defendant-Debtor committed embezzlement and engaged in willful and  
4 malicious conduct which resulted in \$349,899.75 in damages to the  
5 Insured. Defendant-Debtor engaged in business transactions for the  
6 Insured in selling used vehicles from Insured's inventory. While  
7 the principals of Insured may be annoyed or disappointed with  
8 Defendant-Debtor's conduct, the only damages and claims of the  
9 Insured (a corporation) are simply business damages of the  
10 corporation.

11 Sentry Select did not obtain by subrogation merely a right to  
12 sue for punitive damages. Sentry Select obtained the claim for  
13 actual damages caused by the wrongful conduct of Defendant-Debtor  
14 to the Insured's business. To obtain these rights by subrogation,  
15 Sentry Select paid the actual damages because of its obligation  
16 under the insurance policy obtained from it by Insured. For the  
17 rights and claims for actual damages caused by Defendant-Debtor  
18 obtained by Sentry Select, the claim for punitive damages is the  
19 incidental remedy.

20 This is not a situation where the punitive damage claim is  
21 treated as a commodity to be traded in a marketplace. Rather,  
22 Sentry Select was contractually required to pay Insured the actual  
23 damages caused by Defendant-Debtor. Having performed as required  
24 under the insurance policy, Sentry Select obtained by subrogation  
25 the actual damages claim in the amount of \$349,899.75, along with  
26 the punitive damages remedy that is related to that actual damages  
27 claim.

28 Asserting the punitive damage claim by Sentry Select differs

1 substantially from the State of California in *People v. Superior*  
2 *Court*, in which the State was not allowed to assert a bare claim  
3 for punitive damages, unrelated to any actual damages claim of the  
4 State. *People v. Superior Court*, 9 Cal.3d at 287. The Supreme  
5 Court concluded that the State could not assert a claim for  
6 punitive damages without also asserting a claim to which the  
7 punitive damages remedy related. This court reads *People v.*  
8 *Superior Court* not to say that a punitive damages claim could never  
9 be asserted by an "assignee." Rather, the ruling states that a  
10 naked claim for punitive damages, for which there is no independent  
11 claim for actual damages to which the punitive damages remedy  
12 relates, cannot be asserted by an assignee.

13 The punitive damages award, either for the Insured or Sentry  
14 Select, is a "windfall" imposed under California Law to deter the  
15 conduct upon which the underlying claims are based - whether such  
16 conduct would further be committed by the Defendant-Debtor or some  
17 other similarly situated person. If the punitive damages remedy  
18 was not part of the rights and claims subrogated to Sentry Select,  
19 it would be stranded as a lone unenforceable remedy held by the  
20 Insured for which no claim existed.

21 Additionally, as this court addressed in its oral ruling at  
22 trial, the award of punitive damages in this Adversary Proceeding  
23 serves the dual public policy of punishment and deterrence related  
24 to the conduct giving rise to the actual damages. Allowing the  
25 remedy of punitive damages to remain attached to the claim assigned  
26 to Sentry Select furthers this public policy.

27 Finally, if the punitive damages remedy was not enforceable by  
28 Sentry Select as a remedy appended to the assignable claim, then

1 California law would perversely provide the Defendant-Debtor with  
2 a "windfall" because of the reasonable and prudent business  
3 practices of the Insured - maintaining insurance for its business  
4 operations. In effect, the insurance premiums paid by the Insured  
5 would have been to "insure" Defendant-Debtor from any  
6 responsibility for punitive damages arising from his misconduct.  
7 This would be contrary to well-established California law that a  
8 person cannot obtain insurance for punitive damages.<sup>7</sup>

---

9  
10 <sup>7</sup> In *PPG Industries, Inc. v. Transamerica Insurance*  
11 *Company*, 20 Cal.4th at 316-318, the Supreme Court stated three  
12 public policy reasons for not allowing a person to obtain  
13 insurance for punitive damages liability as follows:

14 *First*, there is the policy of not allowing  
15 liability for intentional wrongdoing to be offset or  
16 reduced by the negligence of another. (See, e.g., 6  
17 Witkin, Summary of Cal. Law (9th ed. 1988) Torts,  
18 § 1057, pp. 454-455; Rest.2d Torts, § 481; Prosser &  
19 Keeton on Torts, supra, § 65, at p. 462; *id.*, § 67, at  
20 pp. 477-478.)... Thus, allowing PPG to shift to  
21 Transamerica its responsibility to pay the punitive  
22 damages in the third party action would violate the  
23 public policy against reducing or offsetting liability  
24 for intentional wrongdoing by the negligence of  
25 another.

26 *Second*, the purposes of punitive damages, in both  
27 California and Colorado, are to punish the defendant  
28 and to deter future misconduct by making an example of  
the defendant...If we were to allow the intentional  
wrongdoer, ... , to shift responsibility for its  
morally culpable behavior to the insurance company,  
which surely will pass to the public its higher cost of  
doing business, we would defeat the public policies of  
punishing the intentional wrongdoer for its own  
outrageous conduct and deterring it and others from  
engaging in such conduct in the future. As we explained  
in a previous case: " ' "The policy considerations in a  
state where, as in [California], punitive damages are  
awarded for punishment and deterrence, would seem to  
require that the damages rest ultimately as well as  
nominally on the party actually responsible for the  
wrong..."

1 As stated in this Supplemental Ruling, the court determines  
2 that the punitive damages remedy, which arises from the conduct of  
3 the Defendant-Debtor which is the basis of the actual damages claim  
4 of \$365,000.00, is an assignable claim which is held by Sentry  
5 Select at the time of trial. Such assignable claim for punitive  
6 damages was properly asserted by Sentry Select. The court's  
7 determination that punitive damages in the amount of \$50,100.25 are  
8 awarded Sentry Select is proper and said punitive damages are also  
9 nondischargeable, which amount shall be included in the judgment  
10 issued by the court.

11 The court issues the following Supplemental Findings of Fact  
12 and Conclusions of Law to the oral findings and conclusions stated  
13 on the record at the December 18, 2014 hearing. Fed. R. Civ. P.  
14 52(a); Fed. R. Bankr. P. 7052.

15 Dated: March , 2015

16  
17  
18 

---

RONALD H. SARGIS, Judge  
United States Bankruptcy Court

19  
20  
21  
22 

---

  
23 *Third*, our public policy prohibits indemnification  
24 for punitive damages. (See, e.g., Ins. Code, § 533;  
25 *Peterson v. Superior Court*, *supra*, 31 Cal. 3d at p.  
26 157; *City Products Corp. v. Globe Indemnity Co.*, *supra*,  
27 88 Cal. App. 3d at pp. 39-41.)...To require  
28 Transamerica to make good the loss PPG incurred as  
punitive damages in the third party lawsuit would  
impose on Transamerica an obligation to indemnify, a  
violation of the public policy against indemnification  
for punitive damages.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

# Instructions to Clerk of Court

Service List - Not Part of Order/Judgment

**The Clerk of Court is instructed to** send the Order/Judgment or other court generated document transmitted herewith *to the parties below*. The Clerk of Court will send the Order via the BNC or, if checked \_\_\_\_\_, via the U.S. mail.

**Debtor(s), Attorney for the Debtor(s), Bankruptcy Trustee** (if appointed in the case),  
**and** XX Other Persons Specified Below:

Office of the U.S. Trustee  
Robert T. Matsui United States Courthouse  
501 I Street, Room 7-500  
Sacramento, CA 95814

Gary Farrar  
Chapter 7 Trustee  
P.O. Box 576097  
Modesto, CA 95357

Brian S. Haddix  
1600 G Street, Suite 102  
Modesto, CA 95354

Robert B. Salley  
15250 Ventura Blvd., 9<sup>th</sup> Flr.  
Sherman Oaks, CA 91403

Michael B. Ijams  
1130 12<sup>th</sup> Street, Suite B  
Modesto, CA 95354

Eric D. Farrar  
600 E Main Street, #100  
Turlock, CA 95380

Michael W. Badiou  
11312 Doerksen Road  
Denair, CA 95316-9730